

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION
450 N STREET
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

APRIL 18, 2006

CHIEF COUNSEL MATTERS

J RULEMAKING

J1 PROPOSED AMENDMENTS TO
STATE BOARD OF EQUALIZATION RULES OF PRACTICE

Reported by: Juli Price Jackson
No. CSR 5214

P R E S E N T

For the Board
of Equalization:

Claude Parrish
Vice-Chairman

Bill Leonard
Member

Betty T. Yee
Acting Member

Marcy Jo Mandel
Appearing for Steve
Westly, State Controller
(per Government Code
Section 7.9)

Gary Evans
Acting Chief, Board
Proceedings Division

Kristine Cazadd
Chief Counsel

Bradley Heller
Tax Counsel

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1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 APRIL 18, 2006

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5 MR. EVANS: Good afternoon, Mr. Vice-Chair,
6 Members. This afternoon we have Chief Counsel
7 rulemaking in the administrative session and the voting
8 on this morning's oral hearings.

9 The first matter this afternoon is Chief
10 Counsel Matters, rulemaking, Item J.

11 Ms. Cazadd will make the presentation.

12 MS. CAZADD: Honorable Chairman, Members --

13 MR. PARRISH: You may proceed, please.

14 MS. CAZADD: -- before you today are Chapters 1
15 and Chapters 2 of the new rules for California tax
16 administration and appellate practice.

17 Chapter 1 is a statement of intent. And
18 Chapter 2 encompasses the Board's a sales and use tax,
19 timber tax, special taxes and fees with regard to our
20 appellate procedures.

21 At this point in time, after several interested
22 parties meetings, all unresolved issues have been
23 resolved and agreed upon by the interested parties.
24 And, therefore, we bring this to you today by way of
25 concept approval. We are not seeking publication at
26 this point. We are merely asking you for direction with
27 regard to the concept of the points in front of you.

28 Here to address any details with regard to the

1 rules is Senior Tax Counsel Brad Heller.

2 MR. PARRISH: Maybe you have a small
3 presentation?

4 And I think Mr. Leonard's -- your area --
5 you're on the Tax Advisory Committee and maybe you'd
6 have some comments as well.

7 Why don't just give us a few minutes because I
8 know a lot of work has gone into this.

9 MR. HELLER: Thank you very much, Mr. Parrish
10 and thank you, Members of the Board.

11 Basically we were -- we brought this same
12 package to the Board Members back on January 31st and we
13 received quite a few comments and suggestions.

14 And we went back and looked at those comments
15 and we tried to incorporate the suggestions to the
16 extent possible. And, generally speaking, the main
17 revisions that we made was that we added language that
18 encourages e-filing. We made that language consistent
19 throughout the chapter. And if that language is
20 approved here, we're going to go ahead and add it to the
21 other chapters that we'll be presenting to the Board in
22 the future so that they'll all be consistent.

23 We also expanded the purposes for which a
24 petitioner could request an administrative hearing.
25 There was some question about staff's original language
26 limiting the purposes for which you could request and
27 administrative hearing. We've changed that language so
28 that they're advisory. And they just list potential

1 purposes, but also provide for any purpose. So, the
2 Board can determine whether or not relief is warranted.

3 We've also added language allowing the Board to
4 refund or credit storage fees in the cases where we
5 seize property and stored it and charged the taxpayer a
6 fee for the storage and then determined that we probably
7 shouldn't have seized or stored the equipment in the
8 first -- or the property in the first place.

9 We have also, excuse me, we decreased the
10 deadline for a nonparty to file an amicus brief. And
11 there's two different deadlines, one in each of the
12 alternatives that we're presenting for briefing
13 schedules today. Essentially, we revised those so that
14 -- to allow nonparties to file briefs as late in the
15 process as possible. One, to encourage them to file so
16 that we can -- so that they can participate in the
17 process. But we did have to set some sort of deadline
18 so that the Appeals Division and the Board Members could
19 be advised about those briefs prior to the hearing.

20 Let's see, we also -- we also changed some
21 language that we proposed to allow taxpayers to
22 participate in a Board approved pro bono program to file
23 briefs at the date of their oral hearing as opposed to
24 in advance, according to the general briefing schedule.

25 And, let's see -- and, let's see, I think those
26 are really the major issues.

27 Other than that, we also a deleted the
28 original -- our first alternative that staff was

1 recommending for briefing schedules back in January.

2 We have now renumbered what was Alternatives 2
3 and 3 as new Alternatives 1 and 2. And staff is now
4 recommending what's now Alternative 1 in the current
5 materials. And that's essentially a 20-20-15 schedule
6 that would have -- give taxpayers 20 days from their
7 date of notice of hearing to file their opening brief.
8 We give the Department 20 days from the date of that
9 brief to file a reply and then we give the taxpayer 15
10 days to file their reply brief. And the additional
11 benefit of that schedule is that it gives the Appeals
12 Division an extra 5 days, a full 20 days to review all
13 that briefing once the briefing schedule's completed and
14 and prepare its hearing summary for the Board Members.
15 So, we're hoping that that will create a more informed
16 hearing -- or a better prepared hearing summary and help
17 the Board Members be more prepared for the hearings
18 themselves.

19 I think other than that -- those were the main
20 revisions that we made, just a few other clarifying
21 changes throughout.

22 MR. PARRISH: Very good. Do we have any
23 comments from Members?

24 MR. LEONARD: I have a question on that
25 briefing schedule.

26 MS. MANDEL: Why don't you go to that?

27 MR. LEONARD: Have we had problems with the
28 current deadlines?

1 MR. HELLER: We really --

2 MR. LEONARD: You said you want more time to
3 make sure it's more thorough, is that the real
4 motivation for it?

5 MR. HELLER: Well, from my experience, I don't
6 believe that taxpayers have had a tremendous problem.
7 The only -- the situations where I found that taxpayers
8 have run into issues with our current briefing schedule
9 are situations where they're looking to hire new
10 counsel --

11 MR. LEONARD: Right.

12 MR. HELLER: -- as the briefing process has
13 started.

14 I'm not sure that 5 days is going to make a
15 major impact in alleviating those concerns, at least it
16 does provide a little more leeway for taxpayers who are
17 trying to search out counsel and will give them a little
18 bit more additional time.

19 As far as the Department's concerned, there --
20 there have been some serious constraints on trying to
21 reply to briefs within a 15 day period since it involves
22 the Tax and Fee Programs Division of the Legal
23 Department, which is not involved in the case,
24 basically, until that -- that opening brief comes in.

25 MR. LEONARD: Right.

26 MR. HELLER: So, it would help them in. And
27 then in the cases where the taxpayer does choose to
28 reply, it is very difficult for the Appeals Division to

1 get that -- that last minute brief, review that, figure
2 out whether or not it raises any new issues and then
3 prepare a proper hearing summary for the Board Members.

4 And so, we're hoping --

5 MR. LEONARD: Has any thought been given to
6 sticking to our original -- our current briefing
7 schedule, but allowing the Board Chairman to hear from
8 taxpayer or from Appeals that extra time's needed and
9 grant that?

10 My concern is -- is that the combination of the
11 extra days, while individually may be just justified and
12 hopefully would be a more thorough and vetted summary
13 available to all of us as the briefings are submitted,
14 it -- the culmination of it could easily move the
15 hearing from one Board meeting to another. And that
16 extra three to five week period, if interest is accruing
17 to the taxpayer, the extra days may be totally lost to
18 him, there's no benefit to him, if -- if they end up
19 losing, which most do, and now they're paying extra
20 interest because everybody got an extra five days to
21 think about it and submit their briefs.

22 I -- I don't know if anybody has analyzed what
23 it might do to Board Proceedings and the calendar if --
24 if everybody was pushed backwards by that amount.

25 If there -- that's why I'm suggesting, maybe
26 there are exceptions -- taxpayer wants more time that,
27 one should be easy, the time constraints in Legal, to go
28 to the Chairman and talk about that and let the taxpayer

1 know the extra time is needed on a case by case basis.

2 I'd like to explore that and ask other Board
3 Members --

4 MS. MANDEL: Well, my -- my question would
5 be --

6 MR. LEONARD: -- on that.

7 MS. MANDEL: -- the time which you have in your
8 your alternative as 20 days -- and currently, I guess,
9 is 15 -- that's -- time starts running from the date of
10 the Notice of Hearing; is that correct?

11 MR. HELLER: Correct, for both alternatives.

12 MS. MANDEL: Right. And does this -- pushed
13 Alternative 1, with the 20 days is passed is the concept
14 that the Notices of Hearing will be backed up so that
15 they're going out further in advance of the hearing date
16 so that it's not pushing from -- if we currently send
17 out the Notices of Hearing however many days before a
18 hearing, what 60 days, is it, or 75?

19 MR. EVANS: Typically in the range of about 80.

20 MS. MANDEL: Okay, so --

21 MR. EVANS: The statute says 60.

22 MS. MANDEL: But we typically do 80 and, so,
23 rather than from the 80, is the idea that the hearing
24 notices would go out sooner so we'd still be at the same
25 place?

26 MR. EVANS: Good question.

27 MS. MANDEL: Wouldn't push the calendar?

28 MR. HELLER: That is exactly the concept.

1 Basically right now we're -- we have a proposed
2 regulation that would require Board Proceedings to issue
3 Notices of Hearing at least 60 days prior to the
4 hearing.

5 With -- with Alternative 1's briefing schedule,
6 we would propose to change that language so it would
7 require the Board Proceedings Division to issue notices
8 75 days in advance.

9 And as Mr. Evans pointed out, Board Proceedings
10 already normally does issue its notices around 75 to 80
11 days in advance, although there are occasion where it's
12 later.

13 And so we do think we can make this change
14 without extending the Appeals process or the briefing
15 time itself that actual length of time to get to the
16 hearing, but just utilizing that time a little bit more
17 effectively by having the Board Proceedings Division in
18 every case get the Notice of Hearing out a little bit
19 earlier --

20 MS. MANDEL: Okay. Let me see if --

21 MR. HELLER: -- which is where the issue of
22 time comes from.

23 MS. MANDEL: -- I can like tie it up real fast.

24 So, under the staff proposal taxpayers and the
25 Department and Appeals will have more time to do their
26 work, 5 more days to do their work, you know, get it all
27 right, but -- but we'll still be getting the ultimate
28 product in the same amount of time that we do before the

1 hearing?

2 MR. HELLER: Correct.

3 MS. MANDEL: It doesn't -- it should not impact
4 the Board's calendaring of cases the way Mr. Leonard was
5 concerned because the hearing notices will be going out
6 sooner, so the briefing process out in the world when
7 we're --

8 MR. LEONARD: Right.

9 MS. MANDEL: -- doing whatever will happen.

10 MR. LEONARD: Have we not mandated that,
11 though?

12 MR. HELLER: That was along --

13 MR. LEONARD: I missed that

14 MS. MANDEL: Mandating of the hearing notice?

15 MR. LEONARD: Mandating that the Hearing Notice
16 go out 75 days instead of 60?

17 MS. MANDEL: Or whatever the timing is, it will
18 definitely go out sooner?

19 MR. HELLER: That's correct. If the Board
20 adopts that Alternative 1's briefing schedule, we will
21 make sure that the regulation --

22 MS. MANDEL: Okay, "make sure" is different
23 than his question, which is mandated.

24 MR. HELLER: Well, we haven't brought it to the
25 Board at this point and we don't have -- we do currently
26 have a proposed regulation with 60 days in it. We will
27 change that regulation.

28 MS. MANDEL: Whatever the regulation is that

1 says how far in advance for sending out the Hearing
2 Notices will be conformed to what the Board adopts?

3 MR. LEONARD: You made it a footnote in what
4 we're not quite publishing here. I don't know what
5 we're calling it, but maybe -- I missed that.

6 So, it may not need -- you may need to explain
7 of which direction the calendar is going that you are
8 trying to front load it more.

9 I was counting the days, so close up to hearing
10 time we get more requests to put it over from either
11 parties or Board Members who just haven't had time.

12 MR. PARRISH: I want to thank both of you and
13 everybody involved in your staff for doing this.

14 You know, when things go smoothly, it means a
15 lot of hard work has been done behind the scenes that is
16 never seen.

17 When things drag out here it means it's --
18 sometimes that's not the case, but in this case I would
19 compliment both of you.

20 I think this is taxpayer friendly, in my
21 opinion. And I would hope we get a motion to approve
22 both of these items.

23 MS. MANDEL: Okay, I think I'm okay with the
24 approving it in concept, I think -- and there's been a
25 tremendous amount of work and it's a -- you know, it's a
26 lot of words and sometimes there is things that can, you
27 know, use a little cleaning up and we can, hopefully,
28 work on those as we approve it in concept.

1 Just to give you some simple examples of
2 language, there's one on page 8 where the -- some of the
3 language in this thing is maybe not as user friendly as
4 it can be and it's not necessarily consistent throughout
5 where we're saying things.

6 We've got that sort of third line that says,
7 "The Board will not act upon a petition that is
8 founded upon the grounds described in,"
9 sub-paragraphs whatever, et cetera.

10 In other places we use simple language like,
11 "The Board will not act on a petition based
12 on ..."

13 You know, it's just sort of accessibility of
14 the words. And I know guys have worked -- it's been
15 sort of a committee drafted thing and people worked real
16 hard and sometimes it's hard to see that kind of stuff
17 when you're really close to it.

18 So, there's -- I'll try to go through it with,
19 you know, a red pencil to pick things up like that.

20 And then, just as example of another thing that
21 seemed a little confusing, just as an example, on the
22 same page, that next regulation, which is the scope of a
23 petition filed for the E-waste fee, it says,

24 "A petition for redetermination requesting
25 that the Board reconsider a determination on
26 the grounds that an item is or is not a covered
27 device should be filed with the Department of
28 Toxics. And if the Board gets such a petition,

1 we're going to sent it to Toxics."

2 And, you know, I'm not familiar with this
3 program. The question I had was does this mean the
4 Board has no jurisdiction to decide that question or
5 does it mean that the petition has to first go to Toxics
6 before it ever comes here?

7 If it means that the Board has no jurisdiction,
8 then like the Local Assessment Appeals Hearing Rules,
9 where it explicitly says the Board has no jurisdiction
10 over exemption matters, it seems like we should use
11 something that's more direct so people will know what --
12 you know, what they're actually reading.

13 So, there are a number of things like that and,
14 you know, if I hadn't been doing my taxes this weekend I
15 would have had a much more detailed thing that I could
16 have, you know, handed you before the Board hearing
17 and --

18 MR. LEONARD: Good thing you have lots of taxes
19 to do.

20 MS. MANDEL: Yeah, I had to do everybody's this
21 year. You know, they send you to law school and I think
22 that's what happens, they think they get pay back
23 forever on the investment.

24 MR. LEONARD: Family discount.

25 MS. MANDEL: Yeah, yeah, the family discount's
26 called free.

27 And then the other sort of thing that I had --
28 and I wanted to go back through this again -- is still

1 making sure that we're not putting something in
2 regulation that hamstring -- would hamstring the Board
3 on how it might set up its operations.

4 And the -- the -- you know, there could be --

5 MR. PARRISH: I could put it over.

6 MS. MANDEL: No, no.

7 MR. PARRISH: Which is okay.

8 MS. MANDEL: They're asking for approval in
9 concept, and I have already --

10 MR. PARRISH: Which is -- we'll just put it
11 over.

12 MS. MANDEL: No, no, you know --

13 MR. PARRISH: Because you bring valid points
14 up, valid concerns.

15 This is just polishing it up.

16 MS. MANDEL: It's polishing it up.

17 And one of the reasons for that sort of
18 concern, aside from not wanting to hamstring the Board,
19 is everything we put in a regulation we have to do it
20 exactly that way. Or if somebody, you know, loses, then
21 then that's grounds potentially for them to get it all
22 reversed.

23 So, if we actually write in a regulation that
24 something is going to happen promptly or this or we're
25 going to do it in exactly these steps and something --
26 so, I don't think there -- I don't recall that there is
27 that many of those sorts of things in this group. There
28 might be a few, but more it was the polishing of

1 language.

2 I had talked to the Chief Counsel and she
3 suggested that I just sort of name these things as
4 examples and that approval in concept was okay.

5 Then, you know, since I no longer have to do my
6 taxes, I can go through it in detail and maybe help you
7 work through some of those language items.

8 MR. PARRISH: Okay. And your motion is?

9 MS. YEE: I'll move approval of these rules in
10 concept.

11 MR. PARRISH: In concept, very good.

12 Second?

13 MR. LEONARD: Second.

14 MR. PARRISH: By Mr. Leonard.

15 Without objection?

16 MR. LEONARD: I do have one quibble to add to
17 the list.

18 MR. PARRISH: Please, of course, polishing.

19 MR. LEONARD: I noticed right at the end and --
20 in my office when we all write something, we send it out
21 to somebody who had nothing to do with it to look at it.
22 That's maybe the suggestion that Miss Mandel is making,
23 is just does it pass the common sense rule elsewhere?

24 We're deleting the title of what we're doing of
25 Rules of Practice and we're adopting a new title?

26 MS. MANDEL: It's a mouthful.

27 MR. LEONARD: Board of Equalization Rules for
28 California Tax Administration and Appellate Review,

1 which is, by of governmentese, is BERCTAAR.

2 Could we call them both Rules of Practice,
3 known as -- because we're all going to call it Rules of
4 Practice forever.

5 Could we put it back in there officially is my
6 quibble. Thank you, Mr. Chairman

7 When I call you up and say, "What about the
8 BERCTAAR?" You're just --

9 MR. PARRISH: The BERCTAAR?

10 Well, you know, I never can remember what the
11 Board of Control is now. That was a big mistake to
12 change that.

13 MR. LEONARD: Exhibit A.

14 MR. PARRISH: That was a bad idea. But, I
15 think -- you know what, why you don't come back, we're
16 going to -- we have a motion to approve.

17 And then they're going to come back for final
18 approval, right?

19 So, in case Mr. Leonard doesn't like the
20 acronym, it could be modified.

21 Okay. With that being said, we congratulate
22 you on what you are doing -- in other words, you did
23 vote yes, didn't you, Mr. Leonard?

24 MR. LEONARD: I seconded that motion.

25 MR. PARRISH: You seconded the motion.

26 Without objection, it's so ordered.

27 Thank you.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON Hearing Reporter for the
California State Board of Equalization certify that on
APRIL 18, 2006 I recorded verbatim, in shorthand, to the
best of my ability, the proceedings in the
above-entitled hearing; that I transcribed the shorthand
writing into typewriting; and that the preceding pages 1
through 17 constitute a complete and accurate
transcription of the shorthand writing.

Dated: MAY 10, 2006

JULI PRICE JACKSON
Hearing Reporter